

Local 230, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO (Bechtel Power Corporation) and Charles M. Ritondaro, Case 21-CB-8141

26 August 1983

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS
JENKINS AND ZIMMERMAN

On 7 April 1983 Administrative Law Judge George Christensen issued the attached Decision in this proceeding. Thereafter, the Respondent filed exceptions and a supporting brief.¹

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings,² and conclusions of the Administrative Law Judge³ only to the extent consistent herewith.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Re-

¹ The General Counsel moved to strike Respondent's exceptions for failure to comply with the provisions of Sec. 102.46(b) of the National Labor Relations Board Rules and Regulations, Series 8, as amended. Although Respondent's exceptions and brief in support thereof do not conform in all particulars with the above-cited section of the Board's Rules and Regulations, they are not so deficient as to warrant striking. Accordingly, the General Counsel's motion to strike is denied. *Viracon, Inc.*, 256 NLRB 245, fn. 1 (1981).

² Respondent contends in its exceptions that it called Charging Party Ritondaro at the hiring hall for referral on 21 July 1982, at a time when Ritondaro already had absented himself from the hall. Even assuming, *arguendo*, that Respondent called Ritondaro after he left the hall, as contended, it is evident that Ritondaro was not present solely because he was informed earlier that day by Respondent's business representative-dispatcher, Stan Wallen, that he would not be dispatched and should go back to his home local. In these circumstances, where remaining at the hall for dispatch would be futile, Ritondaro's departure from the hall has no bearing on Respondent's liability in this proceeding.

The Administrative Law Judge inadvertently failed to find that Respondent admitted at the hearing that since at least 1978 Bechtel Power Corporation and Respondent have agreed, pursuant to their collective-bargaining agreement, that Respondent be the exclusive source of employees to perform work within the craft jurisdiction of Respondent and that dispatching be done in accordance with the dispatching procedures of Respondent.

³ The Administrative Law Judge recommended that Respondent be ordered to cease and desist from "in any other manner" interfering with, restraining, or coercing job applicants in the exercise of their protected Sec. 7 rights. In *Hickmott Foods*, 242 NLRB 1357 (1979), we held that such broad injunctive language is warranted only when a respondent has been shown to have a proclivity to violate the Act, or has engaged in such egregious or widespread misconduct as to demonstrate a general disregard for the employees' fundamental statutory rights. Inasmuch as the instant violations do not meet this test, we shall narrow the recommended Order and notice to proscribe only "like or related" conduct.

In view of certain errors and omissions contained in the recommended Order and notice we shall substitute the attached Order and notice for that of the Administrative Law Judge.

lations Board hereby orders that the Respondent, Local 230, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Refusing to dispatch Charles M. Ritondaro or any other person registered on its out-of-work roster to jobs because of their nonmembership in Local 230 by operating its hiring hall in a discriminatory manner.

(b) In any like or related manner restraining or coercing employees, including job applicants, in the exercise of rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which is necessary to effectuate the purposes of the Act:

(a) Notify Bechtel Power Corporation, in writing, with a copy to Ritondaro, that Local 230 has no objection to Bechtel's employment of Ritondaro and that it will operate its hiring hall in a nondiscriminatory manner in referring craftsmen to Bechtel for employment by Bechtel.

(b) Make Ritondaro whole for any losses in wages, benefits, seniority, etc., he has suffered by virtue of the discrimination practiced against him, with any amounts due him calculated in accordance with the standard set out in "The Remedy" portion of the Decision of the Administrative Law Judge.

(c) Post at its business offices, hiring hall, and all other places where notices to its members are customarily posted, copies of the attached notice marked "Appendix."⁴ Copies of said notice, on forms provided by the Regional Director for Region 21, after being duly signed by Local 230's representative, shall be posted by Local 230 immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Local 230 to ensure that said notices are not altered, defaced, or covered by any other material.

(d) Furnish signed copies of the notice to the Regional Director for Region 21 for transmission to and posting by Bechtel, if willing, at all locations where Bechtel customarily posts notices to its employees.

(e) Notify the Regional Director for Region 21, in writing, within 20 days from the date of this

⁴ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Order, what steps have been taken to comply herewith.

APPENDIX

NOTICE TO MEMBERS AND EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT discriminate against Charles M. Ritondaro by refusing to dispatch him to jobs through our hiring hall because he is not a member of Local 230.

WE WILL NOT operate our hiring hall in a discriminatory manner; i.e., by refusing to register and dispatch qualified journeymen because they are not members of Local 230.

WE WILL NOT in any like or related manner restrain or coerce employees, including job applicants, in the exercise of their rights under Section 7 of the National Labor Relations Act, as amended.

WE WILL make Charles M. Ritondaro whole for wages, benefits, and other losses he suffered by virtue of our refusal to dispatch him to a job at Bechtel Power Corporation because he was not a member of Local 230, with interest.

WE WILL advise Bechtel Power Corporation that we have no objection to its employment of Charles M. Ritondaro and that WE WILL operate our hiring hall in a nondiscriminatory manner in dispatching employees therefrom for employment by Bechtel Power Corporation.

LOCAL 230, UNITED ASSOCIATION OF
JOURNEYMEN AND APPRENTICES OF
THE PLUMBING AND PIPEFITTING IN-
DUSTRY OF THE UNITED STATES AND
CANADA, AFL-CIO

DECISION

STATEMENT OF THE CASE

GEORGE CHRISTENSEN, Administrative Law Judge: On December 7, 1982,¹ I conducted a hearing at San Diego, California, to try issues raised by a complaint issued on September 1 based on original and amended charges filed by Ritondaro on July 22 and August 19.

¹ Read 1982 after all further date references omitting the year.

The complaint alleges Local 230, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO (herein Local 230), operated an exclusive hiring hall pursuant to the terms of an agreement between Local 230 and Bechtel Power Corporation (herein Bechtel) and on July 21 violated Section 8(b)(1)(A) and (2) of the National Labor Relations Act, as amended (herein Act), by refusing to dispatch Charles R. Ritondaro (an Individual) to a Bechtel job because Ritondaro was not a member of Local 230, despite the fact he was the most senior registrant on Local 230's out-of-work roster at that time.

Local 230 denied the material allegations of the complaint and committing any violation of the Act.

The issues for determination are whether on July 21: (1) Local 230 was operating an exclusive hiring hall for its craft pursuant to the terms of an agreement between Local 230 and Bechtel; (2) that agreement, practice, and the Act required that Local 230 dispatch the registrant on its out-of-work roster with the earliest or oldest registration date, upon receipt of a request from Bechtel for dispatch of a craftsman or craftsmen from the list, without regard to whether he was a member of Local 230; (3) Ritondaro had the earliest or oldest registration date on Local 230's out-of-work roster when Bechtel requested the dispatch of a craftsman with Ritondaro's qualifications; (4) Local 230 refused to dispatch Ritondaro to the job in question because he was not a member of Local 230; and (5) Local 230 thereby violated the Act.

The parties appeared by counsel at the hearing and were afforded full opportunity to adduce evidence, examine and cross-examine witnesses, argue, and file briefs. Counsel for the General Counsel and Local 230 submitted briefs.

Based on my review of the entire record, observation of the witnesses, perusal of the briefs and research, I enter the following:

FINDINGS OF FACT

I. JURISDICTION AND LABOR ORGANIZATION

The complaint alleges, the answer admits, and I find at all pertinent times Bechtel was an employer engaged in commerce in a business affecting commerce and Local 230 was a labor organization within the meaning of Section 2 of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICE

A. Facts

For a substantial time Ritondaro has been a journeyman plumber-pipefitter and a member of Local 55 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO, which is located in Cleveland, Ohio. In May 1977 Ritondaro moved to San Diego and began to pay travel card dues of \$6 per week to Local 230 and to register on Local 230's out-of-work roster for job referrals. He was dispatched by Local 230 to a number of jobs, including a dispatch to Bechtel for

work on the construction phase of the San Onofre Nuclear Generating Plant project at San Clemente, California. He worked on that job from December 1979 to December 1981, when the construction phase of the project was completed and he and many other craftsmen were laid off.

On December 21, 1981, Ritondaro (and other laid-off craftsmen) went to Local 230's hiring hall and registered their names on its out-of-work roster. Ritondaro was number 178 on the list at the time he registered. Between December 21, 1981, and early July 1982, Ritondaro either visited or telephoned the hiring hall once or twice a week to check on his position on the roster. By early July he was number 10 thereon and began to report to hiring hall on a daily basis, arriving at approximately 8 a.m. (when the hall opened) and leaving about 11 a.m., by which time dispatches normally were concluded.²

In the regular course of operating its hiring hall, Local 230 began to receive calls from employers for dispatch of the craftsmen registered for job referral on its out-of-work roster shortly after 7 a.m. While Local 230 manned its telephones from that hour, it did not open its hiring hall until 8 a.m. When craftsmen registered on its out-of-work roster, those journeymen possessing special skills (combination welders, instrumentation, and calibration specialists, etc.) listed those skills after their names. Those who did not possess those skills simply registered as journeymen plumber-pipefitters. When calls came in from employers requesting the dispatch of craftsmen with special skills, Local 230's dispatcher ran down the roster to the names of the craftsmen listing themselves as qualified in those specialties and dispatched those registrants with the oldest or earliest registration date, passing over those registered as journeymen plumber-pipefitters. Employers were also permitted to request the dispatch of craftsmen those names appeared on the roster by name, in which case they were dispatched without regard to their placement on the roster.

Ritondaro was registered as a journeyman plumber-pipefitter.

On the morning of July 21, Local 230 received six employer requests for employee dispatch. Four of those calls were for craftsmen possessing special skills (welders, instrumentation, and calibration specialists), one was for a number of journeymen by name, and one—from Bechtel—was for the dispatch of five journeymen plumber-pipefitters for maintenance jobs.

As number 3 on the general roster, Ritondaro reasonably expected to be one of the five dispatched in response to the latter request. However, when at or about 9:30 a.m. when Local 230's dispatcher and business representative, Stanley Wallen,³ came out into the hall to

make calls from the roster, he hesitated after reading off Ritondaro's name, the third name on the list, interrupted the call, and went back to his office, stating he would return later. After waiting 10 or 15 minutes, Ritondaro went to the office and asked Wallen if he were going to be dispatched. Wallen asked for his card and Ritondaro handed him his travel card. Wallen inspected the card and stated since Ritondaro was on a travel card, he could not be dispatched. Ritondaro asked why that was so. Wallen replied Local 230 had too many of its own members out of work, he could not dispatch Ritondaro until they were all back to work.⁴ Ritondaro replied his name was on the roster and he had a right to the dispatch. Wallen stated 170 of Local 230's members were out of work, he was not going to dispatch Ritondaro until they were all working, and handed Ritondaro's travel card back to him. Ritondaro asked what point there was in his paying travel card dues to Local 230 and registering on its out-of-work roster. Wallen again stated he was not going to dispatch Ritondaro. Ritondaro turned to leave, stating he would see about that. As he left, Wallen suggested he take his travel card and go back to Cleveland. Ritondaro left the hall. It was approximately 10:30 a.m.

Wallen's version of the events on the morning of July 21 differed diametrically from the foregoing; Wallen testified he conducted a roll call in the hiring hall at or about 8 a.m. to determine if the men near the top of the roster were there, and called out Ritondaro's name; that he then called off the names of the specialists and the calls by name, in accordance with the requests *other than the Bechtel request for five journeymen off the roster*, and went to his office; that Ritondaro followed him to his office, insisted he had been called by name, and demanded his dispatch; that he advised Ritondaro he had not been called by name, he was not going to be dispatched, and that Ritondaro left in a huff. He stated he never asked for Ritondaro's card, never told him he was not dispatching him because many of Local 230's members were out of work and had priority, and never suggested he go back to Cleveland. Wallen further testified that after Ritondaro left the hall, he returned to the hall and called off the roster to fill the Bechtel request for five journeymen off the roster, that he called off Ritondaro's name and, since he did not respond, passed over Ritondaro in filling the Bechtel request. Four members of Local 230 supported portions of Wallen's version.

Ritondaro filed his original charge in this case the day after the foregoing events took place, on July 22.

Ritondaro reported to the hiring hall each day of the following week, but was not dispatched, though he observed a number of journeymen receiving dispatches that week. He was finally dispatched to a job at Baker Engineering on the Friday of the week following these events, i.e., on July 30, subsequent to Local 230's receipt of a copy of the July 22 charge. Ritondaro testified on rebuttal in all the times he reported to the hiring hall between December 1981 and July 1982, the dispatcher

² Under standard practice employers telephoned the hiring hall between 7 and 10 a.m. to request the dispatch of the number and type of craftsmen they wished to hire, and Local 230's dispatcher issued dispatch slips to the craftsmen referred instructing them what job they were to report on the following day.

³ The complaint alleges, the answer admits, and I find at all pertinent times Wallen was a supervisor and agent of Local 230 acting on its behalf within the meaning of Sec. 2 of the Act.

⁴ Work within Local 230's craft in the area was very slow following the completion of the construction phase of the San Onofre project.

never conducted any roll call of the craftsmen present in the hall prior to selecting craftsmen for dispatch to jobs.

B. Conclusions

I credit Ritondaro's testimony; he was an unhesitating, earnest witness with an excellent recall of the events which he recounted. His testimony was both convincing and more rational than that of the other witnesses. One of the Local 230 members who testified he overheard part of the exchange between Ritondaro and Wallen stated he heard it as he was passing by to telephone another member, a friend of his, whose name had been called for dispatch but who was not present; another of the Local 230 members who testified identified the allegedly missing member whose name had been called as present and standing not far from Ritondaro at the time Ritondaro was talking to Wallen. Another testified he did not know Ritondaro and yet recalled Ritondaro responded at the alleged roll call. The testimony of Wallen and his would-be corroborative witnesses was generally unconvincing and is not credited where it contradicts Ritondaro's testimony.

I therefore find and conclude that on July 21 Wallen refused to dispatch Ritondaro to Bechtel for employment beginning the following day as a journeyman plumber-pipefitter because Ritondaro was not a member of Local 230, despite his entitlement to such dispatch as the number 3 man on the out-of-work roster at that time. I further find and conclude by that refusal Local 230 violated Section 8(b)(1)(A) and (2) of the Act.⁶

⁶ *Plumbers Local 624 (Power Piping Co.)*, 211 NLRB 942 (1974); *Asbestos Workers Local 53 (McCarty & Armstrong)*, 185 NLRB 642 (1970).

CONCLUSIONS OF LAW

1. At all pertinent times Bechtel was an employer engaged in commerce in a business affecting commerce and Local 230 was a labor organization within the meaning of Section 2 of the Act.

2. Local 230 violated Section 8(b)(1)(A) and (2) of the Act by refusing to dispatch Ritondaro to a job as a journeyman plumber-pipefitter at Bechtel on July 21 because Ritondaro was not a member of Local 230, despite the fact Ritondaro was entitled to such dispatch by virtue of his placement on Local 230's out-of-work roster and its collective-bargaining agreement with Bechtel.

3. The aforesaid unfair labor practice affected commerce as defined in Section 2 of the Act.

THE REMEDY

Having found Local 230 violated the Act, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the purposes of the Act. Since I found Local 230 violated the Act by its July 21 refusal to dispatch Ritondaro to begin work on July 22 as a maintenance plumber-pipefitter at Bechtel's San Onofre operations, I shall recommend he be made whole for any losses in earnings and benefits he suffered from that date, with the amounts due calculated in the manner set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), and interest thereon computed in accordance with the formula set out in *Florida Steel Corp.*, 231 NLRB 651 (1977), and *Isis Plumbing Co.*, 138 NLRB 716 (1962).

[Recommended Order omitted from publication.]